

# **STATES OF JERSEY**

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## **DRAFT HARBOURS (ADMINISTRATION) (AMENDMENT No. 7)(JERSEY) LAW 200**

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**Lodged au Greffe on 16th October 2007  
by the Minister for Economic Development**

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**STATES GREFFE**





Jersey

## **DRAFT HARBOURS (ADMINISTRATION) (AMENDMENT No. 7) (JERSEY) LAW 200**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development the provisions of the Draft Harbours (Administration) (Amendment No. 7) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

## REPORT

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The States are asked to consider and if appropriate, approve these amendments so that the Harbours (Administration) (Jersey) Law may be used more effectively for the proper management of the port, the Island's territorial waters and, where appropriate, to control commercial ship access.

### Background

The current Law is used in two discrete areas of port, shipping and small boat management. Firstly the Harbours (Jersey) Regulations 1962 ensure the effective and safe administration of the harbours themselves and they are key in controlling the movement of commercial ships. Secondly the Boat and Surf-riding (Control) (Jersey) Regulations 1969 provide a basis for the management of small craft operating in inshore waters.

A small but significant possible fault in the existing Law concerning the definition of territorial waters came to light that affects the interpretation of both these sets of Regulations. Other minor changes are also sought to improve the working of specific boat and surf-riding controls.

As Members will know, helping to ensure the Island has reliable, frequent and affordable ferry services is a crucial area of States policy. Yet, the Law limits the States to making Regulations for the issue of permits that relate solely to the control of the ferry ramps for vehicles. That power needs to be widened to be effective.

Furthermore, the advice is that conditions attached to ramp permits must at the moment be quite narrowly drafted and cannot cover all the matters that the States may wish regarding good passenger care. Broad policy issues which relate to the socio-economic needs of the Island rather than day-to-day port management alone are also believed to be outside the ambit of the current Law. To date these matters have been the subject of somewhat unsatisfactory Service Level Agreements.

The changes thus strengthen the Law in authorising Regulations that control the provision of ferry and other services more generally.

### The Individual Amendments

**Article 2** The current Long Title reads, 'A Law with regard to the policing, control and administration of the harbours of Jersey.' The amendment changes this so that in the first place only the term 'administration' is used, which of course still includes policing and control. Secondly, the term 'territorial waters' is added. This then reiterates what is already stated in other articles of the Law. Indeed, much of the subordinate legislation over the last forty years has been directed at craft in inshore waters, rather than narrowly within a harbour or tidal waters and this change makes that intent explicit.

**Article 3** It is envisaged that new Regulations replacing the current boat and surf-riding ones will remove narrow fixed restrictions on when and where people may surf as well as improve beach safety and boat registration. The insertion of the definition for 'publish' authorises effective publication of any necessary restrictions or administrative controls through modern methods such as the Jersey Harbours website instead of stipulating them in the legislation.

The new definition of territorial waters ensures that there is no 'grey area' in which it might be argued that tidal waters are not controlled. Drying harbours or tidal bays could otherwise have been excluded from the legislation.

**Article 4** This amendment adopts the same 'less is more' approach as used in Article 2. It replaces 'policing, operational control and safety' with the single word 'administration.' In so doing it complements the change in the long title.

### Article 5

**4 Regulations** – There are no substantive changes here and although structurally the text is laid out differently from the current Law, the same powers are granted the States as in the existing Article 4, paragraphs (1), (4) and (5).

**4A Use of facilities and provision of services** – This new article replaces the narrow provisions relating to ramp permits that are currently to be found in Article 4 paragraphs (2) and (3). It allows the States to make Regulations restricting the use of any facility in, or the provision of services in or from, the harbours and territorial waters. It removes the limitation of only being able to issue permits for loading or unloading vehicles using ferry ramps. This is particularly important and reduces the danger of someone arguing that issuing a permit to use a facility for

a particular ferry service is outside the ambit of the Law. The article also allows for a tender process to be used should the need arise.

The States will shortly be presented with the opportunity to consider the Regulations specific to the issue of permits. These are being drafted with a view to ensure effective management of the port by the Harbour Master on the one hand and proper policy oversight by the Minister and the States on the other.

**Article 6** This article consolidates the existing Articles 5 and 6 with one small change: the phrase in the Law has been removed that hypothecated half the fines income (such as that derived from parking offences) to maintaining parish harbours. Article 6(2) currently reads: “one half of that fine shall be awarded for the benefit of the parish in which the offence was committed and the other half shall be awarded for the benefit of the annual income of the States and applied towards the cost of maintaining any harbour in that parish”.

In practice the maintenance of harbours is not financed in this way. So in removing this we follow the intent of Article 3(2) of the Public Finance Law 2005 which requires that “Except as otherwise provided by this or any other enactment – (a) all money received by or on behalf of the States shall be credited to the consolidated fund ...”

**Article 7** Having dealt with the application of fines in the consolidated article this repeals the now superfluous Article 6. Article 7 also falls as there are no Regulations in force that are relevant.

### **Penalties**

Under the existing Article 4 paragraph (4), Regulations may provide for offences and penalties. The amendment repeats this provision in the proposed new Article 4 (2)(c) and 4A (5).

### **Consultation**

Extensive consultation has taken place internally with Jersey Harbours and Law Officers. Consultation with affected parties is planned when the draft Regulations are ready. Indeed, regarding changes being made to reduce the red tape in boat and surf-riding regulation, Jersey Harbours is to go out to consultation very shortly.

These amendments are concerned with ensuring the States have the power to make appropriate and effective Regulations for the administration of the harbour and local waters. They clarify and improve the scope under which Regulations can be made in future but they do not, by themselves, go into the detail. It is that detail that will have particular relevance for port operators, boat owners and beach users. Appropriate consultation on these matters will take place in due course.

### **Resources Implications**

There are no financial, manpower, property, ICT or other implications for the States of Jersey.

### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 16th October 2007 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Harbours (Administration) (Amendment No. 7) (Jersey) Law 200 are compatible with the Convention Rights.

## **Explanatory Note**

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This Law will amend the Harbours (Administration) (Jersey) Law 1961 in two ways.

Firstly, it will make it clear that the expression “territorial waters of Jersey”, as presently used in that Law, includes all of the sea within the seaward limits of the territorial sea adjacent to Jersey.

Without this change of definition much of the sea area of bays and the sea above low water level would be excluded from the area to which the Law applies.

Secondly, it will amend the Law to provide explicitly that the use of an amenity or the provision of a service in a harbour or in territorial waters may be made subject to a person obtaining a permit or entering into an agreement.

Other necessary consequential amendments are also made.





Jersey

# **DRAFT HARBOURS (ADMINISTRATION) (AMENDMENT No. 7) (JERSEY) LAW 200**

## **Arrangement**

### **Article**

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<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Long title substituted</u>
<u>3</u>	<u>Article 1 amended</u>
<u>4</u>	<u>Article 2 amended</u>
<u>5</u>	<u>Article 4 substituted</u>
<u>6</u>	<u>Article 5 amended</u>
<u>7</u>	<u>Articles 6 and 7 repealed</u>
<u>8</u>	<u>Citation and commencement</u>







Jersey

# HARBOURS (ADMINISTRATION) (AMENDMENT No. 7) (JERSEY) LAW 200

A LAW to amend further the Harbours (Administration) (Jersey) Law 1961.

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*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

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## 1 Interpretation

In this Law “the principal Law” means the Harbours (Administration) (Jersey) Law 1961<sup>[1]</sup>.

## 2 Long title substituted

For the Long Title to the principal Law there is substituted the following Long Title –

“A LAW for the administration of harbours and territorial waters”.

## 3 Article 1 amended

Article 1 of the principal Law is amended by inserting after the definition “officer” the following definitions –

“ ‘publish’, in respect of any matter, means publish in a manner that is likely to bring the matter to the attention of those affected by it and ‘published’ is to be construed accordingly;

‘territorial waters’ means the sea within the seaward limits of the territorial sea adjacent to Jersey;”.

## 4 Article 2 amended

For Article 2(3)(a) of the principal Law there is substituted the following clause –

“(a) the administration of harbours and territorial waters; and”.

## 5 Article 4 substituted

For Article 4 of the principal Law there are substituted the following Articles –

#### **“4 Regulations**

- (1) The States may make Regulations for the policing, control, safety and administration of harbours and territorial waters.
- (2) The Regulations may, in particular –
  - (a) require the payment of fees and charges;
  - (b) require information to be published and provide who is to publish it; and
  - (c) provide that a person who contravenes a provision of the Regulations, or a direction or an order made or issued under the Regulations, is guilty of an offence and is liable to the penalty prescribed by the Regulations.
- (3) The Regulations may –
  - (a) make different provision in relation to different cases or to different circumstances; and
  - (b) contain transitional, consequential, incidental or supplementary provisions.

#### **4A Use of facilities and provision of services**

- (1) The use of a facility in or the provision of a service in or from a harbour or territorial waters may be restricted.
- (2) It may be restricted to a person who, whether on application or as a result of an invitation to tender –
  - (a) has been granted a permit; or
  - (b) has entered into an agreement,that permits the person to use the facility or to provide the service.
- (3) A permit or agreement under paragraph (2) may, in particular –
  - (a) provide for the payment of fees and charges;
  - (b) impose conditions and limitations on the use of the facility or the provision of the service;
  - (c) specify the manner in which the permit or agreement may be suspended or terminated; and
  - (d) contain such other provisions as are relevant to the use of the facility or the provision of the service.
- (4) The States may make Regulations providing for the administration of this Article.
- (5) The Regulations may, in particular, provide that –
  - (a) where the use of a facility or the provision of a service is restricted in accordance with paragraph (2), the use of the facility or the provision of the service otherwise than with and in accordance with a permit or agreement is an offence punishable by a fine;
  - (b) that a person who contravenes a provision of the Regulations, or a direction or an order made or issued under the Regulations, is guilty of an offence and is liable to the penalty prescribed by the Regulations.”.

#### **6 Article 5 amended**

At the end of Article 5 of the principal Law there is added the following paragraph –

“(3) One half of the fine is to be retained by the parish in which the offence was committed and the other half must be paid into the consolidated fund.”.

**7 Articles 6 and 7 repealed**

Articles 6 and 7 of the principal Law are repealed.

**8 Citation and commencement**

- (1) This Law may be cited as the Harbours (Administration) (Amendment No. 7) (Jersey) Law 200-.
- (2) It shall come into force on the seventh day following its registration.

